IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, *et al.*, Individually and On Behalf Of All Others Similarly Situated,	§	
Plaintiffs,	§	**CIVIL ACTION NO. H-01-3624**
v.	§	**(Consolidated)**
ENRON CORP., *et al.*,	§	
Defendants.	§	

DEFENDANT RICHARD A. CAUSEY'S MOTION TO DISMISS

Defendant Richard A. Causey files this Motion to Dismiss pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, and based on Rules 8 and 9(b) of those Rules and the Private Securities Litigation Reform Act (the "PSLRA").

Introductory Summary

Richard A. Causey was the Chief Accounting Officer of Enron from January 1997 to February 2002.[1] Plaintiffs, following the lead of the media, have built a major part of their case around alleged accounting irregularities. Nonetheless, repeatedly alleging that Enron's accounting was fraudulent does not make it so, and as the Enron Disclosure Brief argues, analysis of Plaintiffs' accounting allegations demonstrates that they are false or inadequately supported. Similarly, close inspection of Plaintiffs' allegations against Mr. Causey individually demonstrates that they too are deficient under Rules 8 and 9(b) and under the PSLRA.

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[1]Mr. Causey incorporates certain legal arguments in Certain Defendants' Joint Brief Relating to Enron's Disclosures ("Enron Disclosure Brief") and the Joint Brief of Officer Defendants as are specifically referenced herein.

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I. THE ALLEGATIONS SPECIFICALLY REFERENCING CAUSEY DO NOT MEET RULE 9(b) OR PSLRA PLEADING REQUIREMENTS.

The standards applicable to pleading this securities fraud case against Mr. Causey are set forth in the Joint Brief of Officer Defendants, which discussion is incorporated herein by reference. Among the pertinent requirements, as stated by this Court, is "Plaintiffs must allege what actions each Defendant took in furtherance of the alleged scheme and specifically plead what he learned, when he learned it, and how Plaintiffs know what he learned." *In re Securities Litigation BMC Software, Inc.*, 183 F. Supp. 2d 860, 886 (S.D. Tex. 2001). As regards alleged misstatements, Plaintiffs must "specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent." *Id.* at 865 n.14 (quoting *Williams v. WMX Techs., Inc.*, 112 F.3d 175, 177 (5th Cir.), *cert. denied*, 522 U.S. 966 (1997)). It is therefore necessary to examine the "specific" allegations that have been made against Mr. Causey.

The purpose of this Motion is to point out just how vague, nonspecific, and inconsequential the allegations against Mr. Causey are. Particularly significant, there are no allegations attributing any specific misstatements to Mr. Causey. Nor are there any allegations of what Mr. Causey specifically did to further the alleged fraudulent scheme, aside from his having signed various SEC filings in his capacity as Chief Accounting Officer. Further, he is not accused of any self-dealing. In the end, the case pleaded against Mr. Causey is remarkably thin and illusory, and Plaintiffs have not discharged their burden of pleading specific facts particular to Mr. Causey in order to give him fair notice of the charges against him. In the following pages, the different categories of allegations against Mr. Causey are addressed in terms of how and why they are deficient as pleadings of

securities fraud against him.

A. Mr. Causey's Position with Enron

Plaintiffs allege that Mr. Causey was Executive Vice President and Chief Accounting Officer (Complaint ¶ 83(d)); in addition, they identify him as Senior Vice President and Chief Accounting Information and Administrative Officer for the years 1997 and 1998 (Complaint ¶ 88). They allege that by virtue of those positions, Mr. Causey was on the Management or Executive Committees from 1997 through 2000 (Complaint ¶ 88). They also allege that Mr. Causey served as an officer and/or director of New Power (Complaint ¶ 88(hh)), and as "officer and/or director or managing agent" of Atlantic Water Trust and Egret (Complaint ¶ 88(ii)). These allegations as to Mr. Causey's management positions are not sufficient to state a claim against him for securities fraud. *See* Section II.A., Joint Brief of Officer Defendants.

B. Bonuses

Plaintiffs assert that Mr. Causey "received bonus payments of over $1.5 million, in addition to his salary . . . based on Enron's false financial reports and because Enron stock hit certain performance targets." (Complaint ¶ 88(d).) As discussed in Section II.B of the Joint Brief of Officer Defendants, allegations of bonuses or other incentive compensation do not *per se* plead scienter sufficiently.

C. Statements Made During Presentations to Analysts

In fifteen paragraphs,[2] Plaintiffs assert that Mr. Causey was one of a group of Enron officers who participated in discussions with analysts and investors (none of whom is identified by name)

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[2] Complaint ¶¶ 119, 145, 157, 179, 197, 224, 263, 282, 309, 317, 329, 343, 366, 377, and 388.

about Enron's businesses and financial performance. In each of these paragraphs Plaintiffs allege that the Enron representatives "stated" various matters set forth in bold, italicized, bullet points. As alleged, half of the presentations to investors and analysts stretched over two or more days, and included both conference calls as well as "follow-up conversations" and "formal presentations and break-out sessions." Some of the presentations, it is alleged, occurred in multiple locations or cities. It is impossible to ascertain from the Complaint precisely what allegedly was said, when, where, and in what circumstances, or to which analysts and/or investors. Even more problematic for the PSLRA standards, in none of those fifteen paragraphs do Plaintiffs attribute any specific statement(s) to Mr. Causey.[3] In the end, then, there are *no* allegations as to what statements *Mr. Causey* made, *if any*.

Accordingly, in the fifteen paragraphs of the Complaint relating to analysts presentations, Plaintiffs do not plead any misrepresentations or omissions as to Mr. Causey. *See Schiller v. Physicians Resource Group, Inc.*, 2002 WL 318441 (N.D. Tex. 2002):

> The PSLRA and Rule 9(b) require Plaintiffs to identify the particular individual who made the misstatement or omission. Plaintiffs cannot avoid the bar on group pleading by simply identifying the constituents of a group of defendants in rote and conclusory fashion. Plaintiffs cannot satisfy Rule 9(b) by attributing statements or omissions to the corporation without any identification of the officer or director responsible for making the statement.

Id. at *6.

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[3] This failure apparently is the result of deliberate choice. Transcripts of the analysts conference calls are available at one or more Internet sites for most (and perhaps all) of the fifteen analyst conference calls. Plaintiffs availed themselves of those transcripts in pleading those fifteen paragraphs, but (with one notable exception) instead of quoting directly from the transcripts and attributing a statement to a specific speaker, they paraphrased selected statements, set them off in bold italicized type, and then attributed them to a group of speakers. The one exception is paragraph 343, in which they quote a number of statements and attribute them specifically to two speakers, neither of whom is Mr. Causey. Had they desired to, Plaintiffs could have attributed most of the alleged misstatements to a specific speaker.

D. Plaintiffs Do Not Allege Actionable "Insider Trading" by Causey.

Paragraphs 83(d), 84, 401, and 402 contain allegations concerning Mr. Causey's sales of Enron stock. As alleged, Mr. Causey's trading history comprises sales of Enron shares on six days over a three-year period. As they do with all "Enron defendants," Plaintiffs base their "insider trading" claim against Mr. Causey on the conclusion of their"expert" (Scott D. Hakala) that it was statistically "more probable than not" that Mr.Causey's limited stock trades were made with "the possession and use of material adverse non-public information." (Complaint ¶ 415.) This "expert analysis" is clearly statistically lacking and does not take into account other material information such as portfolio concentration, vesting dates, and other material individualized trading information. The Hakala Declaration should not even be considered by this Court. *See* Joint Brief of Officer Defendants, Section II.C.2. Further, as alleged in paragraph 415, the "certainty" of Plaintiffs' allegation, based on Dr. Hakala's inadmissible analysis, that Mr. Causey engaged in illegal insider trading is at best "more probable than not" contrasts markedly with what Plaintiffs assert to the be "scientific acceptance standard (95%)."

Plaintiffs have failed to plead anything about Mr. Causey's stock sales to satisfy the particularity requirements of Rule 9(b) and the PSLRA for pleading illegal insider trading, as reviewed in Section II.C.1 of the Joint Brief of Officer Defendants. None of the insider trading paragraphs identifies any specific material, non-public information known to Mr. Causey when he made the limited stock sales about which Plaintiffs complain. Plaintiffs only generally allege that Mr. Causey was in possession of some unspecified "adverse undisclosed information." (Complaint ¶ 83(d).) They do not plead that Mr. Causey was aware of any specific non-disclosure; nor do they allege that he was aware of any public misstatement. It is well settled that simply being a member

of management — *i.e.*, in a position to know inside information — does not equate to scienter or knowledge of false statements. *Nathenson v. Zonagen, Inc.*, 267 F.3d 400, 412 (5th Cir. 2001) (allegations of motive and opportunity are almost always insufficient to establish scienter). This is the kind of generalized, non-specific allegations the PSLRA outlawed. Paragraph 83(d) is further flawed by the absence of any allegation that the undisclosed information (itself unidentified) was material. In sum, the Complaint is devoid of (1) any specific allegations concerning nonpublic information (2) of which Mr. Causey was aware or (3) how he knew the undisclosed information was material or nonpublic. *See In re Securities Litigation BMC Software,* 183 F. Supp. 2d at 916.

Plaintiffs also make no specific allegations regarding how Mr.Causey's sales are improper, unusual, or suspicious. The closest Plaintiffs come is to allege that "[t]hese defendants' illegal insider selling escalated massively as Enron's stock moved to more inflated levels during the Class Period and also when internally they knew the scheme was unraveling." (Complaint ¶ 403.) This is yet another instance of group pleading, now prohibited by the PSLRA, and is not obviously applicable to Mr. Causey's alleged sales. Mr. Causey's sales were well below the market high of the Class Period (*see* discussion at p. 8, *infra*), contradicting Plaintiffs' description.

Beyond that defect, Plaintiffs' asserted insider trading claim against Mr.Causey fails for other reasons. First, Plaintiffs do not allege a "pattern" of trading by Mr. Causey. Plaintiffs point to only a handful of sales during the three-year class period by Mr. Causey. According to Plaintiffs' figures, fifty- seven percent of the shares he sold during the Class Period were sold before the end of January 2000 – before most of the alleged wrongdoing occurred, well before the market peak, and twenty-two months before the end of the Class Period. Further, Plaintiffs point to no sales history outside the Class Period against which the relevant sales could be measured. *See In re Securities Litigation*

BMC Software, Inc., 183 F. Supp.2d at 901-02 (citing *In re Silicon Graphics, Inc. Sec. Litig.*, 183 F.3d 970, 987 (9th Cir.), *reh'g and reh'g en banc denied*, 195 F.3d 521 (9th Cir. 1999), for proposition that "stock sales cannot be viewed as 'unusual' where defendant 'ha[s] no significant trading history for purposes of comparison'"). Plaintiffs ignore pre-class period sales by Mr. Causey in their "analysis," despite the public records available to them. See Exhibit A, SEC Form 4 for October 1998.

Second, Mr. Causey's insider trades or "pattern" (such as it is) are inconsistent with Plaintiffs' allegations concerning the trading "pattern" of other Defendants who, according to the Complaint, were also "aware" of some undisclosed information. According to the Complaint, one or more of the Defendants collectively sold in almost every month of the Class Period. Plaintiffs then claim that each Defendant's sales "pattern" – although different from the others – somehow supports the same statistically certain inference. If, however, there truly is a specific "pattern" that demonstrates the use of inside information and other Defendants' sales match or establish that pattern, then Mr.Causey's sales cannot possibly match that purported pattern. For example, it is patent nonsense for Plaintiffs to allege that Mr. Causey's "pattern" matches the "pattern" of Mr. Lay's trades (which Plaintiffs allege to number in the hundreds), and that both are recognized patterns of trading on inside information. Any trading "matches" this "pattern." According to Plaintiffs, every sale by every insider in the three-year Class Period was suspect.

Third, the timing of Mr. Causey's sales are neither suspicious nor unusual. His sales of shares, at various dates after options vested, are the type of activity that one would expect from a

rational investor seeking to diversify his portfolio.[4] To establish "suspicious timing," Plaintiffs must show that Mr.Causey's trades were "at times calculated to maximize personal benefit" to him. *In re Apple Computer Litigation*, 886 F.2d 1109, 1117 (9th Cir. 1989). A recognized example would be the sale of a significant percentage of his shares "immediately before a negative earnings announcement." *See, e.g., Wenger v. Lumisys*, 2 F. Supp. 2d 1231, 1251 (N.D. Cal. 1998). Conversely, sales made before the market peak, after its fall, or at other times not maximizing seller's proceeds, give rise to no inference of scienter. *See Nathenson*, 267 F.3d at 420-21 (sales made when stock well below "class period high" were "so inauspiciously timed" they "d[id] not meet this test"); *Greebel v. FTP Software*, 194 F.3d 185, 206 (1st Cir. 1999) ("timing does not appear very suspicious" where stock not "sold at the high points of the stock price"). "When insiders miss the boat [by selling well off the market peak], their sales do not support an inference" of scienter. *Ronconi v. Larkin*, 253 F.3d 423, 435 (9th Cir. 2001). According to Plaintiffs' own figures, Mr. Causey sold shares for as little as $32.560 per share before the market peaked at $90 per share, and $45.180 a share afterward.

Fourth, analysis of the alleged percentages of stock sales by Mr.Causey must be placed in the context of the extraordinarily long class period selected by Plaintiffs – 37 months. See Joint Brief of Officer Defendants at Section II.C.1.a. It is obvious that more sales would occur in a three-year class period than in a shorter, more reasonable timeframe. A number of courts have found nothing suspicious or alarming in sales of stock by insiders in percentages that, if adjusted to reflect a three-

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[4]Under Plaintiffs' model, an Officer Defendant who sold everything as it vested (a not irrational diversification strategy), or simply sold enough to cover taxes on the exercise of options, would automatically be assumed to have traded on illegal inside information, *even if he had no inside information.*

year "window," are substantially less than Mr. Causey's sales. *See, e.g., Silicon Graphics*, 183 F.3d at 985-86 & 987 (sales by some individuals ranging up to 75 percent insufficient to infer scienter in a fifteen week class period); *Ronconi*, 253 F.3d at 435 (sale of 17 percent of holdings in a seven-month period clearly "not suspicious in amount."); *In re Waste Management Sec. Litig.*, CA H-99-2183 (S.D. Tex. 2001), at *16 & *131 (no basis for strong inference of scienter when individuals sold as much as 39.6 percent in a five-month class period). In sum, Plaintiffs have not pleaded adequate specific facts to raise a strong inference of scienter as to Mr. Causey based on his sales of Enron stock or to support a claim against him for insider trading.

E. Interaction with Top Officials of Banks

Paragraphs 653, 675, 694, 716, 736, 751, 774, and 788 contain the identical statement as to each of the bank Defendants that top officials of that bank "constantly interacted with top executives of Enron, *i.e.*, Lay, Skilling, Causey, McMahon or Fastow, on almost a daily basis throughout the Class Period, discussing Enron's business, financial condition, financial plans, financing needs, partnerships, SPEs and Enron's future prospects." This cavalier allegation is on its face remarkable in its breadth and scope, but no details are provided as to what actually was said, by whom and to whom, etc. Without specific, particularized details, these conclusory statements are worthless as allegations of misstatements or allegations probative of scienter.

F. Communications with Outside Directors

Similarly, in paragraph 398, Plaintiffs allege that the outside directors on Enron's Executive, Finance, and Audit Committees were "in frequent contact with Lay, Skilling, Fastow, Buy and Causey to receive information from them about Enron's business." This conclusory allegation does not contain anything about what specific information one or more outside directors received from

Mr. Causey, much less how that information was false or material or connected in any way with the schemes and wrongdoing alleged by Plaintiffs. It is hardly remarkable that the Board had contact, even "frequent" contact, with the company's Chief Accounting Officer.

G. "Snowballing"

In paragraphs 1221(f), 155(k), and 581, Mr. Causey is mentioned in identical allegations concerning"snowballing." Accordingly to Plaintiffs, an unidentified "international accounting officer" repeatedly told Mr. Causey that an accounting writedown had to be taken, but Causey, "at Skilling's direction, routinely responded that 'corporate didn't have room' to take a write-off because doing so would bring Enron's earnings below expectations." The Officer Defendants discuss the merits of these allegations of "snowballing" in the Enron Disclosure Brief at Section V.D.2.

H. Vinson & Elkins Investigation

In paragraph 855, Plaintiffs quote extensively from the letter of Vinson & Elkins to Enron that reported on V&E's investigation of Sherron Watkins's charges of improprieties. Among the points included from the V&E letter is that it had interviewed eleven people, among them Mr. Causey. However, paragraph 855 contains no other mention of Mr. Causey, much less any statement attributed to him or any finding reportedly based on V&E's interview of Mr. Causey.

Mr. Causey's name also appears in connection with the V&E investigation in paragraph 800. Plaintiffs purportedly quote a Newsweek article, which in turn quotes a memo reportedly written by a V&E lawyer containing the following reference to Causey:

> Causey pointed out that an unfortunate error will require an adjustment to the third quarter [financial] statements .... Causey characterizes this as a simple mistake that now requires correction.

This refers to one of the adjustments included in the earnings restatement, as filed in the November

2001 8-K. For the reasons discussed at Section IV of the Enron Disclosure Brief, that restatement is not, standing by itself, evidence of securities fraud, and Plaintiffs do not allege any additional facts or circumstances sufficient to turn the statements attributed to Mr. Causey by Newsweek (via V&E) into actionable misstatements or scienter on the part of Mr. Causey.

I. Fifth Amendment

In paragraphs 68 and 392, Plaintiffs assert that Mr. Causey, among others, refused to testify before Congress. Absent any record of the questions Mr. Causey declined to answer (and no questions relevant to Plaintiffs' allegations were directed to him), there is no basis for drawing an inference that his invocation of his Fifth Amendment rights is probative as to the subject of securities fraud.

J. Alleged Objections to Arthur Andersen Auditor

In paragraphs 93(a) and 913, Plaintiffs allege that Carl Bass, one of the Arthur Andersen auditors assigned to the Enron account, disagreed with both Enron and other Andersen partners about certain (unidentified) aspects of Enron's accounting. Plaintiffs further allege that Mr. Causey "objected to Carl Bass's legitimate concerns" in a meeting with Joseph Berardino (Complaint ¶ 93(a)), and that he and David Duncan "pressed top Andersen management in Chicago to have Bass removed from the account" (Complaint ¶ 913). There are no specifics – either as to Mr. Bass's concerns or as to Mr. Causey's alleged objections – so as to plead with sufficient particularity actionable misstatements, scienter, or participation in a scheme to defraud.

K. Miscellaneous Additional References

Mr. Causey is also mentioned in three paragraphs (449, 475, and 480), somewhat off-handedly, in connection with three different transactions allegedly between Enron and LJM. Those

paragraphs assert, as to Mr. Causey, that (a) he and Mr. Fastow were to allocate certain costs; (b) he was involved in negotiations of "Backbone"; and (c) he signed on behalf of Enron certain documentation relating to Raptor I. No further details are given as to Mr. Causey to indicate how this vague and innocuous conduct amounts to securities fraud or shows participation in furtherance of the alleged schemes of wrongdoing.

II. PLAINTIFFS' SECTION 11 CLAIMS AGAINST MR. CAUSEY SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.

The remaining references to Mr. Causey pertain to his having signed, as Chief Accounting Officer, registration statements or 10-Ks filed on behalf of Enron with the SEC, which are apparently the basis for Plaintiffs' Section 11 claims.[5]

Section 11 provides a remedy for individuals who purchase securities offered pursuant to a "registration statement." 15 U.S.C. § 77k(a). Plaintiffs claim against Mr. Causey should be dismissed for the reasons stated in Section C of Ken Lay's Motion to Dismiss and Section IV of the Outside Directors' Motion to Dismiss, which legal arguments are incorporated herein by reference. In summary, Plaintiffs' Section 11 claims against Mr. Causey should be dismissed because: (1) Plaintiffs lack standing Under Section 11 as to the 7% Notes, (2) absent the required certification, Plaintiffs have failed to show that any purchase was "pursuant to" the challenged prospectus, and (3) Plaintiffs have failed to meet the PSLRA and Rule 9(b) pleading requirements to allege a claim for damages. Plaintiffs further admit that one of the four "offerings" that form the basis of their claim is a "private placement" not subject to Section 11.

As with the rest of the Complaint, Plaintiffs seek to allege "fraud" without alleging any

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[5] Complaint ¶¶ 109, 110, 126, 134, 141, 164, 221, 292, and 336.

misstatement or omission related to any of the four offerings on which they base their claim. Plaintiffs also never allege that any of statement in the "offerings" were material. Based on Plaintiffs' allegations and the law from the Motions to Dismiss of Ken Lay and the Outside Directors, the Section 11 claims against Mr. Causey should be dismissed.

III. PLAINTIFFS' SECTION 20(a) AND 20A CLAIMS ARE INSUFFICIENTLY PLED.

In their "First Claim for Relief" (Complaint ¶¶ 992-97), Plaintiffs purport to allege claims under section 20(a) – in addition to section 10(b) – of the 1934 Act against *all* Defendants, including Mr. Causey. Section 20(a) is, of course, the "controlling person" provision of the Exchange Act; it establishes a derivative liability of persons who "control" those who are primarily liabile under the Exchange Act. Plaintiffs, however, do not say anything about "controlling person" liability in paragraphs 992-97, nor are there any allegations of "control" as to Mr. Causey.

The pleading gap as to control is not supplied elsewhere in the Complaint; there are no sufficient allegations that Mr. Causey had "the power to control" any person alleged to be a primary violator. To be sure, there are allegations as to his management position within Enron, but those allegations, by themselves, are inadequate to establish liability. *See* Section III, Joint Brief of Officer Defendants. They certainly fall short of meeting the requirements for pleading "control" with particularity under the PSLRA. *See In re Splash Technology Holdings, Inc. Sec. Litig.*, 2000 WL 1727377, *20 (N.D. Cal. 2000) ("the complaint must plead the circumstances of the control relationship with particularity"); *Abbott v. Equity Group, Inc.*, 2 F.3d 613, 619-20 (5th Cir. 1993, *cert. denied,* 510 U.S. 1177 (1994); *Rich v. Maidstone Financial, Inc.*, 2001 WL 286757, *6 (S.D.N.Y., 2001) ("much more than a bare allegation of 'control status' is required").

IV. THE TEXAS SECURITIES ACT CLAIM AGAINST MR. CAUSEY MUST BE DISMISSED.

Finally, Plaintiff Washington State Investment Board ("Washington Board"), purporting to represent a "Note Subclass," has sued Mr. Causey under the Texas Securities Act (Fourth Claim for Relief, ¶¶ 1017-1030). That claim should be dismissed as to Mr. Causey.

(1) The Fourth Claim for Relief itself is silent about when the notes in question were offered and when they were purchased by the Washington Board, perhaps deliberately so. According to its Certification,[6] Plaintiff Washington Board purchased the notes in question July 7, 1998 – more than three months before the beginning of the alleged Class Period. The offering documents for the notes are also dated July 1998,[7] and the Registration Statement was dated December 1997[8] – both well before the Class Period. Any alleged pre-class period statements cannot constitute actionable securities fraud. *In re International Bus. Machines Corp. Sec. Lit.*, 163 F.3d 102, 107 (2d Cir. 1998) ; *In re Clearly Canadian Sec. Lit.*, 875 F. Supp. 1410, 1420 (N.D. Cal. 1995). Nor can securities fraud claims be based on statements made *after* the offering or purchase. *Id.*

(2) The Fourth Claim for Relief contains, in microcosm and as a final coda, the panoply of pleading defects that exemplify the Complaint as a whole, including conclusory allegations, group pleading, and failure to plead with specificity alleged misstatements or the operative acts of the named Defendants. The claim falls far short of compliance with Rules 8 and 9(b). To cite just one problem, Plaintiff Washington Board fails to state, or even hint, whether it is suing Mr. Causey as

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[6] Certification of Washington State Board, Schedule A (filed December 20, 2001).

[7] SEC App. Tab 82; *see* Complaint ¶ 612.

[8] SEC App. Tab 83; *see* Complaint ¶ 612.

a "seller" under Art. 581-33A, or a "non-selling issuer" under Art. 581-33C, or both, or neither.

(3) Paragraph 1028 appears to assert liability against Mr. Causey as a "control person," apparently under Section F of the Texas statute. "Control person" under the Texas Securities Act has the meaning imported from the federal statutes and cases. *Busse v. Pacific Cattle Feeding Fund #1, Ltd.*, 896 S.W.2d 807, 815 (Tex. App.– Texarkana 1995, writ denied). The general legal standards for control person liability are discussed in the Joint Brief of Officer Defendants, Section III. Paragraph 1028, as well as the rest of the Fourth Cause of Action, is deficient in alleging control on the part of Mr. Causey.

(4) To the extent the Washington Board's Texas Securities Act claim is based upon alleged failure to comply with state requirements for the registration statement (Art. 581-33A(2)), it is preempted by the National Securities Market Improvement Act ("NSMIA"), 15 U.S.C. § 77r(a)(1).[9] The notes which Plaintiff claims it purchased are covered by the Act, because they are debt offerings by an issuer (Enron) whose stock traded on a listed exchange. *Id.* § 77r(b)(1)(C). As a result, any registration-based claim concerning the sale of these notes is preempted by NSMIA. *See Lander v. Hartford Life & Annuity Ins. Co.*, 251 F.3d 101, 108 (2d Cir. 2001).

Conclusion

The claims against Mr. Causey should be dismissed.

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[9] Section 77r(a)(1) provides: "Except as otherwise provided by this section, *no law, rule regulation, order, or other administrative action of any State* or any political subdivision thereof– (1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, *shall directly or indirectly apply to* a security that–(A) is a covered security; or (B) will be a covered security upon completion of a transaction . . . ." (emphasis added).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was forwarded to all counsel listed on the attached Exhibit A Service List by e-mail or facsimile on this 8th day of May, 2002.

Paul D. Flack

FORM 4

☐ Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

(Print or Type Responses)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(f) of the Investment Company Act of 1940

OMB APPROVAL	
OMB Number:	3235-0287
Expires:	September 30, 1998
Estimated average burden hours per response	0.5

1. Name and Address of Reporting Person*

CAUSEY RICHARD A.

(Last) (First) (Middle)

1400 SMITH STREET

(Street)

HOUSTON, TEXAS 77002-7369

(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol

ENRON CORP. (ENE)

3. IRS or Social Security Number of Reporting Person (Voluntary)

040-66-6681

4. Statement for Month/Year

October 1998

5. If Amendment, Date of Original (Month/Year)

6. Relationship of Reporting Person(s) to Issuer (Check all applicable)

___ Director ___ 10% Owner

_X_ Officer (give title below) ___ Other (specify below)

SENIOR VP, CHIEF ACCOUNTING, INFORMATION & ADMIN. OFFICER

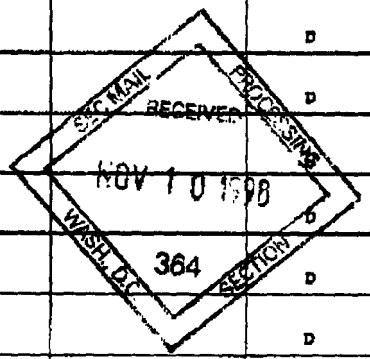
7. Individual or Joint/Group Filing (Check Applicable)

X Form filed by One Reporting Person

___ Form filed by More than One Reporting Person

Table I -- Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	3. Transaction Code (Instr. 8)		4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned at End of Month (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
		Code	V	Amount	(A) or (D)	Price			
Common Stock	01/19/98	A	V	1,496.000	A	$0.0000		D	
Common Stock	08/04/98	A	V	6,000.000	A	$0.0000		D	
Common Stock	10/16/98	M		150.000	A	$13.9375		D	
Common Stock	10/16/98	S		150.000	D	$53.2680		D	
Common Stock	10/16/98	M		1,400.000	A	$28.5000		D	
Common Stock	10/16/98	S		1,400.000	D	$53.2680		D	
Common Stock	10/16/98	M		4,500.000	A	$33.5000		D	
Common Stock	10/16/98	S		4,500.000	D	$53.2680		D	
Common Stock	10/16/98	M		2,780.000	A	$33.5000		D	
Common Stock	10/16/98	S		2,780.000	D	$53.2680		D	



Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly

* If the form filed by more than one reporting person, see Instruction 4(b)(v).

(Over)

SEC 1474 (7-96)

FORM 4 (continued)

Table II -- Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	4. Transaction Code (Instr. 8)		5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Underlying Securities (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Number of Derivative Securities Beneficially Owned at End of Month (Instr. 4)	10. Ownership Form of Derivative Security: Direct (D) or Indirect (I) (Instr. 4)	11. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares				
Employee Non-Qualified Stock Option (right to buy)	$13.9375	10/16/98	M			150.000	05/07/98	05/07/01	Common Stock	150.000		0.000	D	
Employee Non-Qualified Stock Option (right to buy)	$28.5000	10/16/98	M			1,400.000	05/03/97	05/03/03	Common Stock	1,400.000		0.000	D	
Employee Non-Qualified Stock Option (right to buy)	$33.5000	10/16/98	M			4,500.000	02/07/94	02/07/99	Common Stock	4,500.000		0.000	D	
Employee Non-Qualified Stock Option (right to buy)	$33.5000	10/16/98	M			2,780.000	02/07/98	02/07/04	Common Stock	2,780.000		0.000	D	
Employee Non-Qualified Stock Option (right to buy)	$30.5000	10/16/98	M			2,700.000	06/30/97	12/30/04	Common Stock	2,700.000		1,800.000	D	
Employee Non-Qualified Stock Option (right to buy)	$36.7500	10/16/98	M			6,155.000	01/23/96	01/23/01	Common Stock	6,155.000		0.000	D	
Employee Non-Qualified Stock Option (right to buy)	$36.7500	10/16/98	M			10,500.000	01/01/98	01/23/06	Common Stock	10,500.000		9,500.000	D	

Explanation of Responses:

(1) 401(k) plan uses unit accounting system which assumes that the Enron Corp. stock fund is fully invested in shares of Enron Corp. Common Stock (notwithstanding that the fund may hold some uninvested cash or shares of Enron Corp. Cumulative Second Preferred Convertible Stock of which each share is presently convertible into 13.652 shares of Common Stock). Reporting person is entitled to a distribution of the entire amount in shares of Enron Corp. Common Stock.

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations.
See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

Note: File three copies of this Form, one of which must be manually signed.
If space provided is insufficient, See Instruction 6 for procedure.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays the currently valid OMB Number.

**Signature of Reporting Person

11-5-98
Date

FORM 4 continued

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

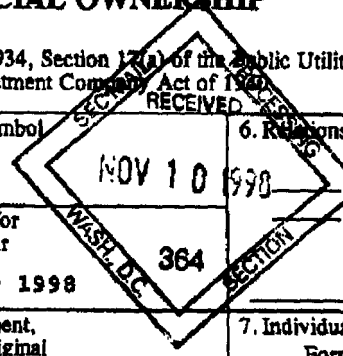
OMB APPROVAL	
OMB Number:	3235-0287
Expires:	September 30, 1998
Estimated average burden hours per response	0.5

☐ Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

(Print or Type Responses)

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(f) of the Investment Company Act of 1940



1. Name and Address of Reporting Person*	2. Issuer Name and Ticker or Trading Symbol	6. Relationship of Reporting Person(s) to Issuer (Check all applicable)
CAUSEY RICHARD A. (Last) (First) (Middle)	ENRON CORP. (ENE)	___ Director ___ 10% Owner ___ Officer (give title below) ___ Other (specify below)
1400 SMITH STREET (Street)	3. IRS or Social Security Number of Reporting Person (Voluntary)	4. Statement for Month/Year: October 1998
HOUSTON, TEXAS 77002-7369 (City) (State) (Zip)	5. If Amendment, Date of Original (Month/Year)	7. Individual or Joint/Group Filing (Check Applicable) ___ Form filed by One Reporting Person ___ Form filed by More than One Reporting Person

Table I – Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	3. Transaction Code (Instr. 8)		4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned at End of Month (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
		Code	V	Amount	(A) or (D)	Price			
Common Stock	10/16/98	M		2,700.000	A	$30.5000		D	
Common Stock	10/16/98	S		2,700.000	D	$53.2680		D	
Common Stock	10/16/98	M		6,155.000	A	$36.7500		D	
Common Stock	10/16/98	S		6,155.000	D	$53.2680		D	
Common Stock	10/16/98	M		10,500.000	A	$36.7500		D	
Common Stock	10/16/98	S		10,500.000	D	$53.2680	17,835.000	D	
Common Stock							665.528	I	by ESOP
Common Stock							3,191.493	I	by 401(k) Plan (1)

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly

* If the form filed by more than one reporting person, see Instruction 4(b)(v).

(Over)

SEC 1474 (7-96)

FORM 4 (continued)

Table II -- Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	4. Transaction Code (Instr. 8)		5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Underlying Securities (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Number of Derivative Securities Beneficially Owned at End of Month (Instr. 4)	10. Ownership Form of Derivative Security: Direct (D) or Indirect (I) (Instr. 4)	11. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares				

Explanation of Responses:

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations.
See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

Note: File three copies of this Form, one of which must be manually signed.
If space provided is insufficient, See Instruction 6 for procedure.

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Robert A. Ewing
**Signature of Reporting Person

11-5-98
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated,	§	
Plaintiffs	§	
vs.	§	CIVIL ACTION NO. H-01-3624
	§	(Consolidated)
ENRON CORP., et al.,	§	
Defendants	§	

ORDER

Having considered the motion to dismiss filed by Defendant Richard A. Causey and all materials filed in support of and in opposition to this motion, and finding that the Complaint fails to state a claim against this Defendant upon which relief can be granted,

It is hereby ORDERED that:

1. Defendant's motion is GRANTED, and

2. The claims against Defendant Richard A. Causey are DISMISSED with prejudice.

SIGNED this _____ day of _____, 2002.

_____
Melinda Harmon
United States District Judge